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Of Attorneys for Defendant Anova Food, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

KING TUNA, INC., a California
corporation,

No. 07-6191-TC

Plaintiff,

**Defendant Anova Food, Inc.'s
MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION AND
IMPROPER VENUE**

v.

ANOVA FOOD, INC., a Georgia
corporation,

**Pursuant to Fed. R.
Civ. P. 12(b)(2) and 12(b)(3)**

Defendant.

(Request for Oral Argument)

L.R. 7.1(a) CERTIFICATE OF COMPLIANCE

Pursuant to LR 7.1(a), on August 31, 2007, Shawn M. Lindsay, counsel for defendant, spoke with plaintiff's counsel, Michelle Ing, and requested that plaintiff dismiss its claims against defendant for lack of personal jurisdiction and venue. The parties made a good faith effort but were unable to resolve the dispute.

MOTION

Defendant Anova Food, Inc. moves pursuant to Fed. R. Civ. P. 12(b)(2) and Fed. R. Civ. P. 12(b)(3) to dismiss all of plaintiff's claims against it, specifically plaintiff's Lanham Act and

Oregon UTPA claims, for lack of personal jurisdiction and lack of venue. Anova has filed a similar motion in Tuna Processors, Inc. v. Anova Food, Inc., United States District Court Case No. C7-6192 before Judge Aiken to dismiss plaintiff's patent infringement claims. In the interests of efficiency and consistency, Anova respectfully requests that both motions be heard and decided at the same time.

Defendant is a Georgia corporation with its principal place of business in Tampa, Florida. Defendant has no officers, employees, distributors, manufacturing facilities, offices or any assets in Oregon. Defendant does not actively advertise in Oregon, it does not directly sell any products in Oregon, nor does it do any business in Oregon. Defendant does not purposefully direct any of its activities at either Oregon or her residents, nor has defendant otherwise purposefully availed itself of the benefits and protections of the laws of Oregon. In short, defendant does not have the Constitutionally-mandated "minimum contacts" with Oregon that will support the exercise of personal jurisdiction over defendant consistent with Due Process. Accordingly, plaintiff's claims against defendant should be dismissed for lack of personal jurisdiction and venue.

This motion is supported by defendant's Memorandum; the Declaration of Shawn M. Lindsay in Support of Defendant's Motion to Dismiss for Lack of Personal Jurisdiction and Venue; and the Declaration of Doug Brinsmade in Support of Defendant's Motion to Dismiss for Lack of Personal Jurisdiction and Venue filed contemporaneously herewith.

DATED this 10th day of September, 2007.

MARKOWITZ, HERBOLD, GLADE
& MEHLHAF, P.C.

By: /s/ Shawn M. Lindsay

Shawn M. Lindsay, OSB #02069
(503) 295-3085
Of Attorneys for Defendant

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ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2007, I have made service of the foregoing **DEFENDANT'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND IMPROPER VENUE** on the party/ies listed below in the manner indicated:

Carl D. Crowell
Michelle L. H. Ing
David W. Sherman
Crowell Ing, LLP
P.O. Box 923
Salem, OR 97308-0923

<input type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Hand Delivery
<input type="checkbox"/>	Overnight Courier
<input type="checkbox"/>	Email
<input checked="" type="checkbox"/>	Electronically via USDC CM/ECF system

DATED this 10th day of September, 2007.

/s/ Shawn M. Lindsay
Shawn M. Lindsay, OSB #02069
Attorney for Defendant

CERTIFICATE OF SERVICE